

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MDL No. 3076

CASE NO. 1:23-md-03076-KMM

IN RE:

FTX Cryptocurrency Exchange Collapse Litigation

This Document Relates To:

Cabo, et al. v. Sequoia Capital Operations, LLC, et al., N.D. Cal. No. 3:23-02222 (awaiting assignment of new case number)

Hawkins v. Bankman-Fried, et al., N.D. Cal. No. 3:22-cv-07620 (N.D. Cal.) (awaiting assignment of new case number)

Lucky D. v. Prager Metis LLP, et al., D. N.J. No. 2:23-cv-00389 (conditional transfer contested)

O’Keefe v. Sequoia Capital Operations, LLC, et al., S.D. Fla. No. 1:23-cv-20700

Papadakis, et al. v. Bankman-Fried, et al., N.D. Cal. No. 3:23-cv-00024 (awaiting assignment of new case number)

Pierce v. Bankman-Fried, et al., S.D. Fla. No. 1:23-cv-22206 (administratively closed)

Siskind v. Sequoia Capital Operations, LLC, et al., S.D. Fla. No. 1:23-cv-20439 (administratively closed)

PRELIMINARY REPORT OF PRAGER METIS CPAS, LLC

Pursuant to this Court’s Order Setting Initial Conference (Dkt. 7), Prager Metis CPAs, LLC (“Prager Metis”) hereby submits this Preliminary Report summarizing its preliminary understanding of this litigation’s facts, legal issues, and procedural posture. Prager Metis reserves the right to supplement or amend this report and submits this Preliminary Report with the

understanding the statements herein are not binding, will not waive claims or defenses, and will not be offered in evidence against Prager Metis in subsequent proceedings.

I. Factual Background

In 2019, Samuel Bankman-Fried and his associates (collectively, “FTX Insiders”) started a cryptocurrency exchange consisting of several affiliated entities collectively referred to as “FTX.” Prager Metis is a New York-based third-party public accounting firm that provided financial statement audit services to one non-public FTX affiliate, FTX Trading, Ltd. (“FTX Trading”),¹ for the years ended December 31, 2021 and December 31, 2020, and for the period April 1, 2019 to December 31, 2019. Consistent with its professional obligations and its role as FTX Trading’s independent outside auditor, Prager Metis did not and could not control the actions of FTX Trading or its executives, and vice versa. Further, Prager Metis did not have any role in the preparation of FTX Trading’s financial statements, those statements being the responsibility of FTX Trading personnel. Prager Metis issued independent auditor reports in connection with its audits of FTX Trading’s financials statements. Those reports were nonpublic and were directed and distributed to FTX Trading’s directors and shareholders.

In November 2022, a series of media reports emerged alleging that FTX Insiders inappropriately commingled customer assets across various entities controlled by Mr. Bankman-Fried. Customers began withdrawing their funds en masse, and FTX swiftly collapsed, declaring bankruptcy that same month. In short order, three FTX Insiders² pled guilty to defrauding customers and investors and agreed to assist federal investigators. Mr. Bankman-Fried was

¹ FTX Trading, Ltd. (“FTX Trading”), an Antigua entity consisting of FTX’s non-US exchange.

² Nishad Singh (FTX co-founder and director of engineering), Gary Wang (FTX co-founder and chief technology officer), Caroline Ellison (Alameda Research chief executive officer).

arrested in the Bahamas and extradited to the United States, where he is currently awaiting trial on fraud and money laundering charges.

In parallel with the criminal proceedings against FTX Insiders, FTX customers initiated over a dozen civil actions in multiple jurisdictions against parties including alleged FTX Insiders, celebrity spokespeople who allegedly promoted FTX, financial institutions that allegedly transacted with FTX, and professional third-party service providers that allegedly provided various professional services to FTX.

Prager Metis is a named defendant in seven FTX-related cases, as discussed in Section III, *infra*. Though styled differently, the substance of all seven complaints against Prager Metis is identical: all allege that, by virtue of its role as an independent auditor of an FTX affiliate, Prager Metis bears responsibility for frauds perpetrated by FTX Insiders. Though Prager Metis's work product was never made public, plaintiffs' theory of liability is premised on a finding that, but for Prager Metis's issuance of unqualified audit opinions, plaintiffs would not have deposited funds into FTX or suffered losses when FTX collapsed.

II. Legal Issues

The seven cases involving Prager Metis, along with all other cases consolidated into this MDL, present several common key questions of fact and law, including:

- Whether FTX Insiders misled customers about FTX's practices for safeguarding customer funds;
- Whether FTX Insiders embezzled customer assets;
- Whether FTX Insiders misrepresented the financial condition of their organization;
- If a fraud took place, which FTX Insiders and entities were involved;

- If fraud took place, whether FTX service providers or spokespeople conspired with FTX Insiders in the commission thereof;
- Whether FTX's service providers and spokespeople could have reasonably prevented FTX from defrauding its customers or investors;
- Whether FTX's service providers and spokespeople owed a duty to FTX's customers or investors, and, if so, the nature of that duty;
- Whether proposed classes satisfy the numerosity, commonality, typicality, and fairness requirements of Fed. R. Civ. P. 23;
- Whether proposed classes are duplicative of one another;
- Whether plaintiffs and putative class members relied upon defendants' statements to their detriment, and, if so, which statements by which defendants;
- Whether plaintiffs and putative class members sustained monetary losses and the proper measure of those losses;
- Whether Prager Metis's alleged actions caused the purported losses of plaintiffs and putative class members; and
- Whether plaintiffs and putative class members are entitled to consequential damages, punitive damages, statutory damages, disgorgement, and/or other legal or equitable remedies.

III. List of Related Cases

Prager Metis is a named defendant in the following related actions:

- Formally Transferred by JPML:
 1. *Papadakis, et al. v. Bankman-Fried, et al.*, No. 3:23-cv-00024 (N.D. Cal.)

2. *Pierce v. Bankman-Fried, et al.*, No. 3:22-cv-07444 (N.D. Cal.)³
3. *Hawkins v. Bankman-Fried, et al.*, No. 3:22-cv-07620 (N.D. Cal.)
- Tag-Along Actions Transferred to MDL via Intra-District Procedures:
 4. *O'Keefe v. Sequoia Capital Operations, LLC, et al.*, No. 1:23-cv-20700 (S.D. Fla.)
 5. *Siskind v. Sequoia Capital Operations, LLC, et al.*, No. 1:23-cv-20439 (S.D. Fla.)⁴
- Tag-Along Actions Conditionally Transferred by JPML:
 6. *Cabo, et al. v. Sequoia Capital Operations, LLC, et al.*, No. 3:23-02222 (N.D. Cal.)⁵
 7. *Lucky D. v. Prager Metis LLP, et al.*, No. 2:23-cv-00389 (D. N.J.)⁶

Of the aforementioned cases, all but *Lucky D.* are presently included in this MDL. Plaintiffs in *Lucky D.* opposed the conditional transfer on June 13, 2023. The JPML has set forth a briefing schedule for the motion to vacate, and we anticipate the JPML will render a final decision on *Lucky D.*'s transfer shortly after its September 28, 2023 hearing session.

IV. List of Affiliated Companies and Counsel

Prager Metis has no parent corporation, and no publicly held corporation owns stock in Prager Metis.

The following counsel are engaged in Prager Metis's defense:

³ Following transfer, *Pierce* was re-numbered as Southern District of Florida Case Number 1:23-cv-22206. This Court administratively closed *Pierce* on June 14, 2023. (*Pierce* Dkt. 62).

⁴ Prager Metis has not been served in *Siskind* and reserves all rights with respect to that case. This filing shall not function as a waiver of service or notice of appearance for *Siskind*. This Court stayed and administratively closed *Siskind* on June 15, 2023. (*Siskind* Dkt. 4).

⁵ Prager Metis has not been served in *Cabo* and reserves all rights with respect to that case. This filing shall not function as a waiver of service or notice of appearance for *Cabo*.

⁶ *Lucky D.* Plaintiffs erroneously referred to Prager Metis CPAs, LLC as "Prager Metis LLP" in their complaint.

Attorney	Firm	Cases
Bruce R. Braun	Sidley Austin LLP 1 South Dearborn Chicago, IL 60603	<i>MDL No. 3076; Papadakis; Pierce; Hawkins; Cabo; Lucky D.; O'Keefe; Siskind</i>
Joanna R. Travalini		
Tommy Hoyt		
Ian M. Ross	Sidley Austin LLP 1001 Brickell Bay Drive Suite 900 Miami, FL 33131	<i>MDL No. 3076; O'Keefe; Siskind</i>
Sarah A. Hemmendinger	Sidley Austin LLP 555 California Street San Francisco, CA 94104	<i>Hawkins; Pierce; Papadakis; Cabo</i>
Meredith Kaplan Stoma	Lewis Brisbois Bisgaard & Smith LLP 1 Riverfront Plaza Suite 800 Newark, NJ 07102	<i>Lucky D.</i>
Peter T. Shapiro		

V. List of Pending Motions

The following motions remain pending in the various cases involving Prager Metis:

Case	Motion Date	Dkt No.	Motion Description
<i>Lucky D. v. Prager Metis LLP, et al.</i> , No. 2:23-cv-00389 (D. N.J.)	03/15/2023	28	Defendants' Request for Stay Pending a Decision by the Judicial Panel on Multidistrict Litigation
<i>O'Keefe v. Sequoia Capital Operations, LLC, et al.</i> , No. 1:23-cv-20700 (S.D. Fla.)	3/22/2023	47	Defendant's Federal Deposit Insurance Corporation as Receiver for Signature Bank Motion to Stay Proceedings
	Various	67, 71, 72	Assorted Motions to Appear <i>Pro Hac Vice</i>
	6/13/2023	89	Agreed Motion to Reassign Case for Intra-District Transfer of Related Case and for Stay of Case Deadlines

Dated: June 16, 2023

Respectfully submitted,

/s/ Ian M. Ross
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Counsel for Defendant Prager Metis CPAs, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of June, 2023, I e-filed the foregoing document using the Court's CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Ian M. Ross
Ian M. Ross, Esq.